



**Billing Code: 4310-MR-W**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Ocean Energy Management**

**[Docket No. BOEM-2014-0038]**

**Atlantic Wind Lease Sale 3 (ATLW3) Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Maryland—Final Sale Notice**

**MMAA104000**

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Final Sale Notice for Commercial Leasing for Wind Power on the Outer Continental Shelf Offshore Maryland.

**SUMMARY:** This document is the Final Sale Notice (FSN) for the sale of two commercial wind energy leases on the Outer Continental Shelf (OCS) offshore Maryland, pursuant to BOEM's regulations at 30 CFR 585.216. BOEM is offering Lease OCS-A 0489 (North Lease Area) and Lease OCS-A 0490 (South Lease Area) for sale using a multiple factor auction format. The two lease areas (LAs) together comprise the Maryland Wind Energy Area (WEA) described in the *Call for Information and Nominations* (Call) published on February 3, 2012 (see "Area Offered for Leasing" below for a description of the WEA and LAs) (77 FR 5552). The two LAs are identical to those announced in the *Proposed Sale Notice (PSN) for Commercial Leasing for Wind Power on the Outer Continental Shelf (OCS) Offshore Maryland*, which was published on December 18, 2013, in the *Federal Register* with a 60-day public comment period (78 FR 76643). This FSN contains information pertaining to the areas available for leasing, lease provisions and conditions, auction details, the lease form, criteria for evaluating competing bids, award procedures, appeal procedures, and lease execution. The issuance

of the leases resulting from this lease sale would not constitute an approval of project-specific plans to develop offshore wind energy. Such plans, expected to be submitted by successful lessees, will be subject to subsequent environmental and public review prior to a decision to proceed with development.

**DATES:** BOEM will hold a mock auction for the eligible bidders on August 12, 2014.

The monetary auction will be held online and will begin at 8:30 a.m. Eastern Daylight Time (EDT) on August 19, 2014. Additional details are provided in the section entitled, “Deadlines and Milestones for Bidders.”

**FOR FURTHER INFORMATION CONTACT:** Erin C. Trager, BOEM Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Maryland 20170, (703) 787-1320 or [erin.trager@boem.gov](mailto:erin.trager@boem.gov).

**AUTHORITY:** This FSN is published pursuant to subsection 8(p) of the OCS Lands Act (43 U.S.C. 1337(p)) (“the Act”), as amended by section 388 of the Energy Policy Act of 2005 (EPAAct), and the implementing regulations at 30 CFR Part 585, including 30 CFR 585.211 and 585.216.

**BACKGROUND:** The two LAs offered in this FSN are the same areas BOEM announced in the PSN on December 18, 2013 (78 FR 76643). BOEM received 20 comment submissions in response to the PSN, which are available in the *Federal Register* docket for this notice through BOEM’s website at: <http://www.boem.gov/State-Activities-Maryland/>. BOEM also has posted a document containing responses to comments submitted during the PSN comment period and listing other changes that BOEM has implemented for this lease sale since publication of the PSN. The document

entitled, *Response to Comments and Explanation of Changes* can be found at the following URL: <http://www.boem.gov/State-Activities-Maryland/>.

On February 3, 2012, BOEM published a Notice of Availability (NOA) (77 FR 5560) for the final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for commercial wind lease issuance and site assessment activities on the Atlantic OCS offshore New Jersey, Delaware, Maryland, and Virginia, pursuant to the National Environmental Policy Act (NEPA). Consultations ran concurrently with the preparation of the EA and included consultation under the Endangered Species Act (ESA), Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), section 106 of the National Historic Preservation Act (NHPA), and the Coastal Zone Management Act (CZMA). The two LAs identified in this FSN together comprise the Maryland Wind Energy Area (WEA) described in the preferred alternative in the *Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore New Jersey, Delaware, Maryland, and Virginia Final Environmental Assessment* (Regional EA), which can be found at: [http://www.boem.gov/uploadedFiles/BOEM/Renewable\\_Energy\\_Program/Smart\\_from\\_the\\_Start/Mid-Atlantic\\_Final\\_EA\\_012012.pdf](http://www.boem.gov/uploadedFiles/BOEM/Renewable_Energy_Program/Smart_from_the_Start/Mid-Atlantic_Final_EA_012012.pdf).

On May 29, 2012, BOEM initiated consultation with the National Marine Fisheries Service under the ESA for geological and geophysical (G&G) activities in support of oil and gas exploration and development, renewable energy, and marine minerals in the Mid and South Atlantic Planning Areas. Formal consultation concluded on July 19, 2013, with receipt of a Biological Opinion that, along with the previous

informal consultation, informed the development of the Maryland commercial wind lease packages.

Additional environmental reviews will be conducted upon receipt of the lessees' proposed project-specific plans, such as a Site Assessment Plan (SAP) or Construction and Operations Plan (COP).

### **Relevant Information for Potential Bidders**

Potential bidders should be aware of the following items under consideration by BOEM relevant to or situated near the Maryland WEA.

**Atlantic Grid Holdings LLC Right of Way (ROW) Grant Request:** On March 31, 2011, Atlantic Grid Holdings LLC submitted an unsolicited application for a ROW grant. Following publication of a notice to determine competitive interest in the grant area and a 60-day public comment period, BOEM published its determination of no competitive interest on May 15, 2012 (77 FR 28620). The nomination and associated notices can be found at: <http://www.boem.gov/Renewable-Energy-Program/State-Activities/Regional-Proposals.aspx>. On May 1, 2013, Atlantic Grid Holdings LLC submitted a supplement to its application, which can be found at the web address above. BOEM anticipates that the Maryland lease sale will occur prior to a decision regarding the granting of a ROW to Atlantic Grid Holdings LLC, as a result of the required environmental compliance documentation that is still needed. BOEM does not foresee the activities under the ROW grant interfering with the lessee's ability to develop the lease areas.

**Final Rule: Timing Requirements for the Submission of a SAP or General Activities Plan (GAP) for a Renewable Energy Project on the Outer Continental Shelf:** On April 17, 2014, BOEM published its Final Rule to extend timing requirements

for submitting a SAP and a GAP pursuant to its renewable energy regulations. Effective May 19, 2014, all OCS renewable energy lessees and grantees will have 12 months from lease or grant issuance to submit a SAP or GAP. Previously, BOEM regulations required lessees and grantees to submit a SAP or a GAP either 60 days after BOEM determined there was no competitive interest in the lease or grant, or six months after the lease or grant was issued competitively. Leases OCS-A 0489 and OCS-A 0490 have been updated to conform to the Final Rule. The Final Rule can be found at:

<http://www.boem.gov/FR-79-21617/>.

**Potential Future Restrictions – Navigational Safety:** Potential bidders should note that portions of certain sub-blocks in both the North and South LAs may not be available for future development (i.e., installation of wind facilities) due to navigational safety concerns, as discussed below.

*Proximity to Delaware Bay Traffic Separation Scheme (TSS)*

During discussions with the Maryland Intergovernmental Task Force on June 24, 2011, the U.S. Coast Guard (USCG) recommended that BOEM not approve the installation of wind facilities within 1 nautical mile of a TSS to help ensure navigational safety. This recommendation was reiterated at subsequent Task Force meetings.

Moreover, the USCG has expressed that it may determine in the future that a larger setback is necessary under certain circumstances. Tables 1 and 2 list potentially affected blocks and assume a 1 nautical mile setback from an extended Delaware Bay TSS. Maps identifying these sub-blocks are available on BOEM’s website at:

<http://www.boem.gov/State-Activities-Maryland/>.

Table 1. North Leasing Area: Blocks with Potential Restrictions

<b>Protraction Name</b>	<b>Protraction No.</b>	<b>Block Number</b>	<b>Sub Block</b>
Salisbury	NJ18-05	6624	D,H
Salisbury	NJ18-05	6625	E,I,N
Salisbury	NJ18-05	6675	B,C,G,H,L,P
Salisbury	NJ18-05	6676	M
Salisbury	NJ18-05	6726	A,B,F

Table 2. South Leasing Area: Blocks with Potential Restrictions

<b>Protraction Name</b>	<b>Protraction No.</b>	<b>Block Number</b>	<b>Sub Block</b>
Salisbury	NJ18-05	6726	J,K,O,P
Salisbury	NJ18-05	6776	D,H
Salisbury	NJ18-05	6777	E,I,J,N
Salisbury	NJ18-05	6827	C,G,H,L
Salisbury	NJ18-05	6828	M

*Traditional Tug, Towing, and Barge Traffic Route*

On April 22, 2013, BOEM received a letter from the USCG providing analysis of tug, towing, and barge traffic that currently transits through the MD WEA. The letter discussed potential safety implications of allowing offshore wind development in the area, particularly in the southeastern corner of the WEA, and requested that BOEM consider leasing two smaller LA configurations. This letter can be found on BOEM's website at: <http://www.boem.gov/State-Activities-Maryland/>.

BOEM gathered input regarding the area to lease from the members of BOEM's Maryland Intergovernmental Task Force during a Task Force webinar held on June 27, 2013, and received additional comments and correspondence from relevant stakeholders since that time. This includes correspondence received on August 29, 2013, from the American Waterways Operators (AWO), an organization representing the U.S. tugboat, towboat, and barge industry. In its August letter, AWO expressed concern with the Maryland WEA and its potential to disrupt traditional transit routes through the southeastern corner of the WEA. AWO stated that if full build-out were to occur in the Maryland WEA, this development could cause tugboats to navigate further east or west from their current north-south routes, which, in certain weather conditions, could put these vessels at greater risk and jeopardize safe transit due to different sea state conditions farther offshore and greater congestion closer inshore. This letter can be found on BOEM's website at: <http://www.boem.gov/State-Activities-Maryland/>.

In a letter to BOEM dated September 4, 2013, the Business Network for Maryland Offshore Wind requested that BOEM refrain from making any reductions to the Maryland WEA prior to leasing. They provide responses to the points in USCG's April 22, 2013, letter and suggest that reducing the area now, prior to receipt of a COP and an associated navigational risk assessment, would be premature. The letter suggests that any reduction of the area due to potential navigational safety risk and any associated costs of rerouting traffic would be best addressed during review of each lessee's COP in the context of a comprehensive Environmental Impact Statement (EIS).

After considering the issues raised by the USCG and other relevant parties and evaluating all information available to date pertaining to tug, towing, and barge traffic

through the Maryland WEA, BOEM has decided not to reduce the size of the MD WEA offered in this FSN. BOEM will receive additional vessel traffic data and analysis in the future, which will better inform BOEM's decisions whether to approve, disapprove, or approve with conditions a lessee's COP, particularly with regard to site-specific restrictions or mitigations to alleviate navigational concerns. Additional information that BOEM expects to have available to inform its decision would include the final navigational safety risk assessment that will be submitted with each lessee's COP, and the results of two ongoing studies: 1) the U.S. Coast Guard's Atlantic Coast Port Access Route Study (ACPARS), and 2) a BOEM-funded study, "Marine Vessel Traffic and Wind Energy Development Infrastructure on the OCS – Risk Analysis," being conducted by the Department of Energy's Pacific Northwest National Laboratory (PNNL). Further discussion on this topic is provided in the *Response to Comments and Explanation of Changes*, which can be found at the following URL: <http://www.boem.gov/State-Activities-Maryland/>.

**LIST OF ELIGIBLE BIDDERS:** BOEM has determined that the following companies are legally, technically, and financially qualified, pursuant to 30 CFR 585.106 and 107, to hold a commercial wind lease offshore Maryland, and are therefore eligible to participate in this lease sale as bidders.

<b>Company Name</b>	<b>Company Number</b>
Apex Offshore Maryland, LLC	15048
Bluewater Wind Maryland LLC	15018
Convallt Energy LLC	15051



<b>Company Name</b>	<b>Company Number</b>
Dominion Wind Development, LLC	15049
EDF Renewable Development, Inc.	15028
Energy Management, Inc.	15015
Fishermen's Energy, LLC	15005
Green Sail Energy LLC	15045
IBERDROLA RENEWABLES, Inc.	15019
Maryland Offshore Wind LLC	15016
Orisol Energy US, Inc.	15020
RES America Developments Inc.	15021
SCS Maryland Energy LLC	15050
Sea Breeze Energy LLC	15044
Seawind Renewable Energy Corporation LLC	15017
US Wind Inc.	15023

**DEADLINES AND MILESTONES FOR BIDDERS:** This section describes the major deadlines and milestones in the auction process from publication of this FSN to execution of a lease pursuant to this sale.

- Bidder's Financial Form (BFF): Each eligible bidder must submit a BFF to BOEM by July 17, 2014. The BFF is available at: <http://www.boem.gov/State-Activities-Maryland/>. Once this information has been processed by BOEM, bidders may log into *pay.gov* and leave bid deposits. BOEM may disallow any

bidder who fails to submit the BFF by this deadline from participating in the auction.

- Bid Deposits: Each bidder must submit an adequate bid deposit by August 1, 2014, as described in the “Bid Deposits” section. BOEM may disallow any bidder who fails to submit the bid deposit by this deadline from participating in the auction.
- Non-Monetary Package: Each bidder must submit a non-monetary package, if it is applying for a credit, by August 8, 2014.
- Mock Auction: BOEM will hold a Mock Auction on August 12, 2014. The Mock Auction will be held online. BOEM will contact each eligible bidder and provide instructions for participation. Only bidders eligible to participate in this auction will be permitted to participate in the Mock Auction.
- Panel Convenes to Evaluate Non-Monetary Packages: On August 15, 2014, the panel described in the “Auction Procedures” section will convene to consider non-monetary packages. The panel will send determinations of eligibility to BOEM, who will inform each bidder by email of the panel’s determination of their status.
- Monetary Auction: On August 19, 2014, BOEM, through its contractor, will hold the monetary stage of the auction. The auction will start at 8:30 a.m. EDT. The auction will proceed electronically according to a schedule to be distributed by the BOEM Auction Manager at the time of the auction. BOEM anticipates that the auction may continue on consecutive business days, as necessary, until the

auction ends according to the procedures described in the Auction Format section of this notice.

- **Announce Provisional Winner:** BOEM will announce the provisional winner of the lease sale after the auction ends.
- **Reconvene the Panel:** The panel will reconvene to verify auction results.
- **Refund Non-Winners:** BOEM will return the bid deposits of any bidders who did not win a lease.
- **Department of Justice (DOJ) Review:** BOEM will afford DOJ 30 days to conduct an antitrust review of the auction, pursuant to 43 USC 1337(c), which reads, in relevant part:

Antitrust review of lease sales. (1) Following each notice of a proposed lease sale and before the acceptance of bids and the issuance of leases based on such bids, the Secretary [of the Interior] shall allow the Attorney General, in consultation with the Federal Trade Commission, 30 calendar days to review the results of such lease sale, except that the Attorney General, after consultation with the Federal Trade Commission, may agree to a shorter review period.

- **Deliver the Leases:** BOEM will send three lease copies to each winner, with instructions on how to accept and execute the lease. The first year's rent payment is due 45 days after the winner receives the lease for execution.
- **Return the Leases:** The auction winner will have 10 business days from receiving the lease copies in which to post financial assurance, pay any outstanding balance of their bonus bids, and sign and return the three copies.

- **Execute the Leases:** Once BOEM has received the lease copies and verified that all required materials have been received, BOEM will make a final determination regarding its execution of the lease and execute if appropriate.
- **Reject Unsuccessful Bids:** Once the lease has been executed, BOEM will provide unsuccessful bidders a written statement of the reasons their bids were rejected.

**AREAS OFFERED FOR LEASING:** The North and South LAs described for leasing in this FSN are the same areas described in the Maryland PSN (78 FR 76643, December 18, 2013). The North and South LAs together contain 9 whole OCS blocks and 80 sub-blocks, or approximately 79,707 acres. The North LA consists of 32,737 acres and the South LA consists of 46,970 acres. If there are adequate bids, two leases will be issued pursuant to this lease sale. A description of the LAs and lease activities can be found in Addendum “A” of each lease, which BOEM has made available with this notice on its website at: <http://www.boem.gov/State-Activities-Maryland/>.

**Map of the Area Offered for Leasing:** A map of the North and South LAs can be found at the following URL: <http://www.boem.gov/State-Activities-Maryland/>.

A large scale map showing boundaries of the area with numbered blocks is available from BOEM at the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 381 Elden Street, HM 1328, Herndon, Virginia 20170, Phone: (703) 787-1300, Fax: (703) 787-1708.

**WITHDRAWAL OF BLOCKS:** Interested parties should note that BOEM reserves the right to withdraw portions of the LAs prior to its execution of a lease based upon relevant information provided to the Bureau.

**LEASE TERMS AND CONDITIONS:** BOEM has included specific terms, conditions, and stipulations for the OCS commercial wind leases in the Maryland WEA within Addendum “C” of each lease. BOEM reserves the right to apply additional terms and conditions to activities conducted on the lease incident to any future approval or approval with modifications of a SAP and/or COP. Each lease, including Addendum “C”, is available on BOEM’s website at: <http://www.boem.gov/State-Activities-Maryland/>. Each lease consists of an instrument with 20 sections and the following seven attachments:

- Addendum “A” (Description of Leased Area and Lease Activities);
- Addendum “B” (Lease Term and Financial Schedule);
- Addendum “C” (Lease-Specific Terms, Conditions, and Stipulations);
- Addendum “D” (Project Easement);
- Addendum “E” (Rent Schedule);
- Appendix A to Addendum “C” (Incident Report: Protected Species Injury or Mortality); and
- Appendix B to Addendum “C” (Required Data Elements for Protected Species Observer Reports).

Addenda “A”, “B”, and “C” provide detailed descriptions of lease terms and conditions. Addenda “D” and “E” will be completed at the time of COP approval.

**Plans:** Pursuant to 30 CFR 585.601, the lessee must submit a SAP within the 1 year Preliminary Term. If the lessee intends to continue its commercial lease with an operations term, the lessee must submit a COP at least 6 months before the end of the site assessment term.

**FINANCIAL TERMS AND CONDITIONS:** This section provides an overview of the basic annual payments that the Lessee must pay under the lease terms, and the financial assurance requirements that will be associated with each lease.

**Rent:** The first year's rent payment of \$3 per acre for the entire leased area is due within 45 days of the date the winning bidder receives the lease for execution. Thereafter, annual rent payments are due on the anniversary of the Effective Date of the lease, i.e., the Lease Anniversary. Once the first commercial operations under the lease begin, rent will be charged on the part of the lease not authorized for commercial operations, i.e., not generating electricity. However, instead of geographically dividing the LA into acreage that is "generating" and acreage that is "non-generating," the fraction of the lease accruing rent is based on the fraction of the total nameplate capacity of the project that is not yet in operation. The fraction is the nameplate capacity not yet authorized for commercial operations at the time payment is due, divided by the maximum nameplate capacity authorized in the lessee's most recent approved COP. This fraction is then multiplied by the amount of rent that would be due for the lessee's entire leased area at the rental rate of \$3 per acre to obtain the annual rent due for a given year.

For example, for a lease the size of 32,737 acres (the size of the Maryland North LA), the amount of rent payment will be \$98,211 per year if the entire leased area is not yet authorized for commercial operations. If the lessee has 250 megawatts (MW) authorized under commercial operations and its most recent approved COP specifies a maximum project size of 500 MW, the rent payment will be \$49,106 (reflecting that rental payments are rounded up to the nearest whole dollar).

The lessee also must pay rent for any project easement associated with the lease commencing on the date that BOEM approves the COP (or modification) that describes the project easement. Annual rent for a project easement that is 200 feet wide and centered on the transmission cable would be \$70 per statute mile. For any additional acreage required, the lessee must also pay the greater of \$5 per acre per year or \$450 per year.

**Operating Fee:** For the purposes of calculating the initial annual operating fee payment, an operating fee rate is applied to a proxy for the wholesale market value of the electricity expected to be generated from the project during its first 12 months of operations. This initial payment is prorated to reflect the period between the commencement of commercial operations and the Lease Anniversary. The initial annual operating fee payment is due within 45 days of the start of commercial operations. Thereafter, subsequent annual operating fee payments are due on or before each Lease Anniversary.

The subsequent annual operating fee payments are calculated by multiplying the operating fee rate by the imputed wholesale market value of the projected annual electric power production. For the purposes of this calculation, the imputed market value is the product of the project's nameplate capacity, the total number of hours in the year (8,760), a capacity utilization factor, and the annual average price of electricity derived from a historical regional wholesale power price index. For example, an annual operating fee for a 100 MW wind facility operating at 40% capacity (decimal equivalent is 0.4) with a regional wholesale power price of \$40/MWh under an operating fee rate of 2% (decimal equivalent is 0.02) would be calculated to be \$277,440 as follows: Annual operating fee = 100 MW x 8,670 hours/year x 0.4 x \$40/MWh power price x 0.02.

***Operating Fee Rate:*** The operating fee rate is set at 0.02 (i.e., 2%) during the entire life of commercial operations.

***Nameplate Capacity:*** Nameplate capacity is the maximum rated electric output, expressed in MW, which the turbines of the wind facility under commercial operations can produce at their rated wind speed as designated by the turbine's manufacturer. The nameplate capacity at the start of each year of commercial operations on the lease will be specified in the COP. For example, if the Lessee has 20 turbines under commercial operations rated by the design manufacturer at 5 MW of output each, the nameplate capacity of the wind facility at the rated wind speed of the turbines would be 100 MW.

***Capacity Factor:*** The capacity factor relates to the amount of energy delivered to the grid during a period of time compared to the amount of energy the wind facility would have produced at full capacity during that same period of time. This factor is represented as a decimal between zero and one. There are several reasons why the amount of power delivered is less than the theoretical 100% of capacity. For a wind facility, the capacity factor is mostly determined by the availability of wind. Transmission line loss and down time for maintenance or other purposes also affect the capacity factor.

The capacity factor for the year in which the commercial operation date occurs and for the first six full years of commercial operations on the lease is set to 0.4 (i.e., 40%) to allow for one year of installation and testing followed by five years at full availability. At the end of the sixth year, the capacity factor may be adjusted to reflect the performance over the previous five years based upon the actual metered electricity generation at the delivery point to the electrical grid. Similar adjustments to the capacity



factor may be made once every five years thereafter. The maximum change in the capacity factor from one period to the next will be limited to plus or minus 10 percent of the previous period's value.

***Wholesale Power Price Index:*** The wholesale power price, expressed in dollars per MW-hour, is determined at the time each annual operating fee payment is due, based on the weighted average of the inflation-adjusted peak and off-peak spot price indices for the Northeast – PJM West power market for the most recent year of data available as reported by the Federal Energy Regulatory Commission (FERC) as part of its annual State of the Markets Report with specific reference to the summary entitled, “Electric Market Overview: Regional Spot Prices.” The wholesale power price is adjusted for inflation from the year associated with the published spot price indices to the year in which the operating fee is to be due based on the Lease Anniversary using annual implicit price deflators as reported by the U.S. Department of Commerce’s Bureau of Economic Analysis.

**Financial Assurance:** Within 10 business days after receiving the lease copies, the provisional winner must provide an initial lease-specific bond or other approved means of meeting the Lessor’s initial financial assurance requirements in the amount of \$100,000. BOEM will base the amount of all SAP, COP, and decommissioning financial assurance requirements on estimates of the cost to meet all accrued lease obligations. BOEM will determine the amount of supplemental and decommissioning financial assurance requirements on a case-by-case basis.

The financial terms can be found in Addendum “B” of the lease, which BOEM has made available with this notice on its website at: <http://www.boem.gov/State-Activities-Maryland/>.

**BID DEPOSIT:** A bid deposit is an advance cash deposit submitted to BOEM in order to participate in the auction. No later than August 1, 2014, each bidder must have submitted a bid deposit of \$450,000 per unit of desired initial eligibility. Each lease is worth one unit of bid eligibility in the auction. The required bid deposit for any participant intending to bid on both leases in the first round of the auction will be \$900,000. Any participant intending to bid on only one of the leases during the auction must submit a bid deposit of \$450,000. Any bidder that fails to submit the bid deposit by August 1, 2014, may be disqualified from participating in the auction. Bid deposits will be accepted online via *pay.gov*.

Following publication of the FSN, each bidder must fill out the BFF included in the FSN. BOEM has made a copy of the proposed BFF available with this notice on its website at: <http://www.boem.gov/State-Activities-Maryland/>. This form requests that each bidder designate an email address, which the bidder should use to create an account in *pay.gov*. After establishing the *pay.gov* account, bidders may use the Bid Deposit Form on the *pay.gov* website to leave a deposit.

Following the auction, bid deposits will be applied against any bonus bids or other obligations owed to BOEM. If the bid deposit exceeds a bidder's total financial obligation, the balance of the bid deposit will be refunded to the bidder. BOEM will refund bid deposits to unsuccessful bidders.

**MINIMUM BID:** In this auction, approximately 32,737 acres will be offered for sale as Lease OCS-A 0489 (North Lease Area), and approximately 46,970 acres will be offered for sale as Lease OCS-A 0490 (South Lease Area). The minimum bid is \$2 per acre for each LA. Therefore, the minimum acceptable bid will be \$65,474 for the North Lease Area and \$93,940 for the South Lease Area.

## **AUCTION PROCEDURES:**

### **Summary**

For the sale of Lease OCS-A 0489 (North Lease Area) and Lease OCS-A 0490 (South Lease Area), BOEM will use a multiple-factor auction format with a multiple-factor bidding system. Under this system, BOEM may consider a combination of monetary and nonmonetary factors, or “variables,” in determining the outcome of the auction. BOEM has appointed a panel of three BOEM employees for the purposes of reviewing the non-monetary packages and verifying the results of the lease sale. BOEM reserves the right to change the composition of this panel prior to the date of the lease sale. The panel will meet to consider non-monetary packages on August 15, 2014. The panel will determine whether any bidder has earned a non-monetary credit to be used during the auction, and, if one or more bidders have earned such a credit, the percentage the credit will be worth.

The auction will balance consideration of two variables: (1) a cash bid, and (2) a non-monetary credit, i.e., if a bidder holds a Power Purchase Agreement (PPA), or a Maryland Public Service Commission (PSC) issued Offshore Renewable Energy Credit (OREC), as described herein. In sum, these two variables comprise the multi-factor bid or “As-Bid” auction price. A bidder’s As-Bid price, which is the sum of its cash bid and

any credit portion earned, can be submitted by the bidder at BOEM's asking price or as an Intra-Round Bid price subject to certain conditions, as described more fully herein. BOEM's regulations at 30 CFR 585.220(a)(4) and 585.221(a)(6) provide for multiple-factor auctions, wherein both monetary and nonmonetary bid variables may be considered.

### **Overview of the Multiple-factor Bidding Format Proposed for this Sale**

Under a multiple-factor bidding format, as set forth at 30 CFR 585.220(a)(4), BOEM may consider a combination of factors as part of a bid. The regulations state that one bid proposal per bidder will be accepted, but do not further specify the procedures to be followed in the multiple-factor format. A multiple-factor format is intended to allow BOEM flexibility in administering the auction and in balancing the variables presented. The regulations leave to BOEM the determination of how to administer the multiple-factor auction format to ensure the receipt of a fair return under the Act, 43 U.S.C. 1337(p)(2)(A). BOEM has chosen to do this through an auction format that considers a non-monetary factor along with ascending bidding over multiple rounds, sharing certain useful information with bidders at the end of each auction round (e.g., the number of live bids associated with each LA), and ensuring that a bidder's live bid submitted in the final round of the auction will win the LAs included in that bid. This auction format enhances competition and reduces bidder uncertainty more effectively than other auction types that BOEM considered because the multiple-factor format provides for sharing relevant information and allowing bidders to respond in subsequent rounds as that information is revealed.

BOEM's regulations at 30 CFR 585.220(a)(4) provide for a multi-round auction in which each bidder may submit only one proposal per LA or for a set of LAs in each round of the auction. This formulation presents an administratively efficient auction process. It also takes advantage of the flexibility built into the regulations by enabling BOEM to benefit from both the consideration of more than one bidding factor and the price discovery involved in successive rounds of bidding.

The auction will be conducted in a series of rounds. At the start of each round, BOEM will state an asking price for the North LA and an asking price for the South LA. The asking price for a bid on both LAs is the sum of the asking prices for the North LA and the South LA. Each bidder will indicate whether it is willing to meet the asking price for one or both LAs. A bid submitted at the full asking price for one or both LAs in a particular round is referred to as a "live bid." A bidder must submit a live bid for at least one of the LAs in each round to participate in the next round of the auction. As long as there is at least one LA that is included in two or more live bids, the auction continues, and the next round is held.

A bidder may meet the asking price by submitting a monetary bid equal to the asking price or, if it has earned a credit, by submitting a multiple-factor bid — that is, a live bid that consists of a monetary element and a non-monetary element, the sum of which equals the asking price. A multiple-factor bid would consist of the sum of a cash portion and any credit portion that the bidder has earned.

An uncontested bid is a live bid that does not overlap with other live bids in that round. For example, a bid for both the North and the South LAs is considered contested if any LA included in that bid is included in another bid — a bid cannot be "partially

uncontested.” If a bidder submits an uncontested bid consisting of one LA, and the auction continues for another round, BOEM automatically carries that same live bid forward as a live bid into the next round, and BOEM’s asking price for the LA contained in the uncontested bid would remain unchanged from the previous round. If the price on the LA in that bid rises later in the auction because another bidder places a live bid on that LA, BOEM will stop automatically carrying forward the previously uncontested bid. Once the asking price goes up, the bidder that placed the previously carried-forward bid is free to bid on either LA at the new asking prices.

Following each round in which either LA is contained in more than one live bid, BOEM will raise the asking price for that LA by an increment determined by BOEM. The auction concludes when neither the North LA nor the South LA is included in more than one live bid. The series of rounds and the rising asking prices set by BOEM will facilitate consideration of the first variable – the cash portion of the bid.

The second variable – a credit of up to 25% of a monetary bid for holding a PPA or a Maryland OREC Order – will be applied throughout the auction rounds as a form of imputed payment against the asking price for the highest priced LA in a bidder’s multiple-factor bid. This credit serves to supplement the amount of a cash bid proposal made by a particular bidder in each round. In the case of a bidder holding a credit and bidding on more than one LA, the credit will be applied only on the LA with the highest asking price. More details on the non-monetary factors are found in the “Credit Factors” section herein.

Under BOEM’s regulations at 30 CFR 585.222(d), a panel will weigh the variables and determine the winner(s) of the auction. The regulations state that BOEM

“will determine the winning bid for proposals submitted under the multiple-factor bidding format on the basis of selection by the panel...” 30 CFR 585.224(h). The panel will evaluate each non-monetary package to determine whether it meets the criteria provided in this FSN, and therefore whether it will qualify for a credit for its holder. It is possible that the panel could determine that no bidder qualifies for a non-monetary credit during the auction, in which case the auction would otherwise proceed as described in the FSN. The panel will determine the winning bids for each LA in accordance with the procedures described in this FSN.

### **Details of the Auction Process**

#### *Bidding – Live Bids*

Each bidder is allowed to submit a live bid for one LA (North or South), or both LAs based on its “eligibility” at the opening of each round. A bidder’s initial eligibility is determined based on the amount of the bid deposit submitted by the bidder by August 1, 2014. To be eligible to offer a bid on one LA at the start of the auction, a bidder must submit a bid deposit of \$450,000. To be eligible to offer a bid on both the North and South LAs in the first round of the auction, the bidder must submit a bid deposit of \$900,000. A bidder’s bid deposit will be used by BOEM as a down payment on any monetary obligations incurred by the bidder should it be awarded a lease.

As the auction proceeds, a bidder’s continuing eligibility is determined by the number of LAs included in its live bid submitted in the round prior to the current round. That is, if a bidder submitted a live bid on one LA in the previous round, that bidder may submit a bid that includes at most one LA in the current round. If a bidder submitted a live bid comprised of both LAs in the previous round, that bidder may submit a live bid

that also includes these two LAs in the current round. Unless a bidder has an uncontested bid that is carried forward into the next round, a bidder that submitted a live bid for both LAs may choose to submit a live bid for one LA. Thus, eligibility in successive rounds may stay the same or go down, but it can never go up.

In the first round of the auction, bidders have the following options:

A bidder with an initial eligibility of one (that is, a bidder who submitted a bid deposit of \$450,000) may:

- Submit a live bid on the North LA or the South LA, or
- Submit nothing, and drop out of the bidding.

A bidder with an initial eligibility of two (that is, a bidder who submitted a bid deposit of \$900,000) may:

- Submit a live bid for both the North and South LAs,
- Submit a live bid for either the North LA or the South LA, or
- Submit nothing, and drop out of the bidding.

Before each subsequent round of the auction, BOEM will raise the asking price for any LA that received more than one live bid in the previous round. BOEM will not raise the asking price for a LA that received only one or no live bids in the previous round.

BOEM, in its sole discretion, will determine asking price increments. BOEM will base asking price increments on a number of factors, including:

- Making the increments sufficiently large that the auction will not take an unduly long time to conclude; and



- Decreasing the increments as the asking price of a LA nears its apparent final price.

BOEM reserves the right during the auction to increase or decrease increments if it determines, in its sole discretion, that a different increment is warranted to enhance the efficiency of the auction process. Asking prices for the LAs included in multiple live bids in the previous round will be raised and rounded to the nearest whole dollar amount to obtain the asking prices in the current round.

A bidder must submit a live bid in each round of the auction (or have an uncontested live bid automatically carried forward by BOEM) for it to remain active and continue bidding in future rounds. All of the live bids submitted in any round of the auction will be preserved and considered binding until determination of the winning bids is made. Therefore, the bidders are responsible for payment of the bids they submit and can be held accountable for up to the maximum amount of those bids determined to be winning bids during the final award procedures.

Between rounds, BOEM will release the following information:

- The level of demand for each LA in the previous round of the auction (i.e., the number of live bids that included the LA); and
- The asking price for each LA in the upcoming round of the auction.

In any subsequent round of the auction, if a bidder's previous round bid was uncontested, and the auction continues for another round, then BOEM will automatically carry forward that bid as a live bid in the next round. A bidder whose bid is being carried forward will not have an opportunity to modify or drop its bid until some other bidder submits a live bid that overlaps with the LA in the carried forward bid. Note that in this

sale, a carried-forward bid will always be for only one LA – if a live bid consisting of both North and South was uncontested, the auction would end. In particular, for rounds in which a bidder finds its uncontested bid is carried forward, the bidder will be unable to do the following:

- Switch to the other LA;
- Submit an Intra-Round Bid (see herein for discussion of Intra-Round Bids); or
- Drop out of the bidding.

In this scenario, the bidder is effectively “frozen” through future auction rounds for as long as its bid for that LA remains uncontested. Moreover, the bidder may be bound by that bid or, indeed, by any other bid which BOEM determines is a winning bid in the award stage. Hence, a bidder cannot drop an uncontested bid. In no scenario can a bidder be relieved of any of its bids from any round until a determination is made in the award stage about the LAs won by the bidder.

If a bidder’s bid is not being carried forward by BOEM (i.e., a contested bid), a bidder with an eligibility of one (that is, a bidder who submitted a live bid for either the North LA or the South LA in the previous round) may:

- Submit a live bid for either the North LA or the South LA;
- Submit an Intra-Round Bid for the same LA for which the bidder submitted a live bid in the previous round, and exit the auction; or
- Submit nothing, and drop out of the bidding.

Additionally, if a bid is not being carried forward by BOEM (i.e., a contested bid), a bidder with an eligibility of two (that is, a bidder who submitted a live bid for both North and South in the previous round) may:

- Submit a live bid for both the North and South LAs;
- Submit a live bid for either the North LA or the South LA;
- Submit an Intra-Round Bid for both the North and South LAs, and a live bid for either the North LA or the South LA;
- Submit an Intra-Round Bid for both the North and South LAs, no live bids, and exit the auction; or
- Submit nothing, and drop out of the bidding.

Subsequent auction rounds occur in this sale as long as either the North LA or the South LA is contested. The auction concludes at the end of the round in which neither the North LA nor the South LA is included in the live bid of more than one bidder, e.g., all live bids are uncontested.

#### *Bidding – Intra-Round Bids*

All asking prices and asking price increments will be determined by the BOEM Auction Manager. Intra-round bidding allows bidders to more precisely express the maximum price they are willing to offer for the North, South, or both LAs while also minimizing the chance of ties. An Intra-Round Bid must consist of a single offer price for exactly the same LA(s) included in the bidder's live bid in the previous round.

When submitting an Intra-Round Bid, the bidder is indicating that it is not willing to meet the current round's asking price, but it is willing to pay more than the previous round's asking price. In particular, in an Intra-Round Bid, the bidder specifies the maximum (higher than the previous round's asking price and less than the current round's asking price) that it is willing to offer for the specific LA(s) in its previous round's live bid.

Although an Intra-Round Bid is *not* a live bid, in the round in which a valid Intra-Round Bid is submitted for both LAs, the bidder's eligibility for a live bid in that same round and future rounds is permanently reduced from including two LAs to one LA. In other words, once an Intra-Round Bid is submitted, the bidder will never again have the opportunity to submit a live bid on as many LAs as it has bid in previous rounds.

BOEM will not consider the presence of Intra-Round Bids for the purpose of determining whether to increase the asking price for a particular LA or to end the auction. Also, BOEM will not count or share with bidders between rounds the number of Intra-Round Bids received for each LA.

All of the Intra-Round Bids submitted during the auction will be preserved, and may be determined to be winning bids. Therefore, bidders are responsible for payment of the bids they submit and may be held accountable for up to the maximum amount of any Intra-Round Bids or live bids determined to be winning bids during the final award procedures.

#### *Determining Provisional Winners*

After the bidding ends, BOEM will determine the provisionally winning bids in accordance with the process described in this section. This process consists of two stages: Stage 1 and Stage 2, which are described herein. Once the auction itself ends, nothing further is required of bidders within or between Stages 1 and 2. [In practice, the stages of the process will be determined by the auction software, which will analyze the monetary and credit portion of the bids, determine provisional winners, find the LAs won by the provisional winners, and calculate the applicable bid prices to be paid by the winners for the LAs they won.] This evaluation will be reviewed, checked and validated

by the panel. The determination of provisional winners, in both stages, will be based on the two auction variables, as well as on a bidder's adherence to the rules of the auction, and the absence of conduct detrimental to the integrity of the competitive auction.

- *Stage 1*

Live bids submitted in the final round of the auction are Qualified Bids. Live bids submitted before the final round and any Intra-Round Bids submitted in any round of the auction are Contingent Bids. In Stage 1, a bidder with a Qualified Bid is provisionally assured of winning the LA(s) included in its final round bid, regardless of any other Contingent Bids. If both LAs receive live bids in the final round, they are awarded to bidders in Stage 1, and the second award stage is not necessary. If either the North LA or the South LA received a Contingent Bid but not a Qualified Bid, BOEM will proceed to Stage 2 to award the leases.

Following the auction, all winning bidders must pay the price associated with their winning bids, which may consist of cash and non-monetary credits or just cash.

- *Stage 2*

In Stage 2, BOEM will consider Contingent Bids to determine if the LA(s) not awarded in Stage 1 can be awarded in Stage 2. BOEM will award these LAs in Stage 2 based upon the Contingent Bids that maximize the total As-Bid prices in the auction. However, in order to preserve the award of Qualified Bids in Stage 1, the only circumstance in which a Contingent Bid may replace a Qualified Bid is when the Contingent Bid is submitted by the same bidder and includes the LA of the Qualified Bid it replaces. For example, suppose a particular bidder placed a live bid for the North LA in the final round of this auction and a live bid was not entered for the South LA in that

round. In Stage 2, BOEM would then consider only awards in which this bidder receives the North LA and possibly also the South LA (e.g., as a result of a Contingent Bid for both the North LA and South LA). If the bidder's Qualified Bid is replaced by its Contingent Bid for the North and South LAs (represented either by an Intra-Round bid for both LAs or by a bid comprising both LAs in the previous round), the bidder would pay the price associated with its Contingent Bid for the LAs contained therein.

Under certain circumstances, different combinations of Contingent Bids from two or more bidders may result in the same total As-Bid price. In such cases, BOEM will resolve the resulting tie with a random drawing.

In the event a bidder submits a bid for a LA that the panel and BOEM determine to be a winning bid, the bidder will be expected to sign the applicable lease documents in a timely manner and submit the full cash payment due, pursuant to 30 CFR 585.224. If a bidder fails to timely sign and pay for the lease, then BOEM will not issue the lease to that bidder, and the bidder will forfeit its bid deposit. BOEM may consider failure of a bidder to timely pay the full amount due as an indication that the bidder is no longer financially qualified to participate in other lease sales under BOEM's regulations at 30 CFR 585.106 and 585.107.

**Credit Factors:**

Prior to the auction, BOEM will convene a panel pursuant to 30 CFR 585.222(d) to evaluate bidders' non-monetary packages to determine whether and to what extent each bidder is eligible for a non-monetary credit applicable to the As-Bid auction price for one of the LAs in each round of the auction, as described herein. In order to receive a credit for a PPA or Maryland OREC Order, a bidder must be legally, technically and

financially eligible to acquire a commercial OCS wind lease, and any single PPA or Maryland OREC Order cannot be used by more than one bidder in the auction.

The percentage credit that will be applicable to each bidder throughout the auction and award process is determined based on the panel's evaluation of required documentation submitted by the bidders as of August 8, 2014. Bidders will be informed by email before the monetary auction about the percentage credit applicable to their bids. A bidder may not receive more than one credit, and the bid credit will be applicable to only one LA. Any non-monetary credit will be applicable only to the higher priced LA in a bid for both LAs. For an Intra-Round Bid containing both LAs, the higher priced LA will be determined using the previous round's asking prices. In each round, the auction system will display to each bidder information showing how their As-Bid auction prices are affected by the credit imputed to their bid to determine their net monetary payment due to BOEM, should their bids prevail as winning bids in the award stages. Application of the credit percentage to the appropriate As-Bid auction price will be rounded to the nearest whole dollar amount.

The bidder's credit percentage is limited to the greater of 25% for a Maryland OREC Order, or up to 25% for a PPA. This credit percentage will be applied to the highest priced LA related to the bidder's latest live bid or Intra-Round Bid. During each round, bidders are informed by the BOEM Auction System how the credit applies to their live bid and any Intra-Round Bid. In the case of a live bid for both LAs, the credit will apply only to the LA having the highest current round asking price. In the case of an Intra-Round Bid for both LAs, the credit will apply only to the higher-priced LA, but the applicable price for calculating the credit will be based on the previous round's asking

prices, not on any additional amount above the previous round's asking prices as reflected in the incremental amount associated with its Intra-Round Bid.

The panel will review the non-monetary package submitted by each bidder, and, based on the criteria of a PPA or Maryland OREC Order as provided in this FSN, determine whether bidders have established that they are qualified to receive a credit and the percentage at which that credit will apply. If the panel determines that no bidder has qualified for a non-monetary factor, the auction will proceed with each bidder registered with no imputed credit.

**Credit Factor Definitions:**

The definitions herein will apply to the factors for which bidders may earn a credit.

*Power purchase agreement (PPA)* is any legally enforceable long-term contract negotiated between an electricity generator (Generator) and a power purchaser (Buyer) that identifies, defines, and stipulates the rights and obligations of one party to produce, and the other party to purchase, energy from an offshore wind project to be located in the lease sale area. The PPA must have been approved by a public utility commission or the equivalent. The PPA must state that the Generator will sell to the Buyer and the Buyer will buy from the Generator capacity, energy, and/or environmental attribute products from the project, as defined in the terms and conditions set forth in the PPA. Energy products to be supplied by the Generator and the details of the firm cost recovery mechanism approved by the state's public utility commission or other applicable authority used to recover expenditures incurred as a result of the PPA must be specified



in the PPA. To qualify, a PPA must contain the following terms or supporting documentation:

- (i) A complete description of the proposed project;
- (ii) Identification of both the electricity Generator and Buyer that will enter into a long term contract;
- (iii) A timeline for permitting, licensing, and construction;
- (iv) Pricing projected under the long term contract being sought, including prices for all market products that would be sold under the proposed long term contract;
- (v) A schedule of quantities of each product to be delivered and projected electrical energy production profiles;
- (vi) The term for the long-term contract;
- (vii) Citations to all filings related to the PPA that have been made with state and Federal agencies, and identification of all such filings that are necessary to be made; and
- (viii) Copies of or citations to interconnection filings related to the PPA.

If the panel determines a bidder has executed a PPA for at least 250 MW, it will be eligible for the entire 25% credit. If the panel determines a bidder has executed a PPA for an amount less than 250 MW, the bidder may still be eligible for a non-monetary credit proportional to the PPA's fraction of 250 MW. The smaller percentage for a partial credit will be calculated according to the formula below:

$$\text{Partial Credit} = \frac{(\text{Full Credit} * \text{Partial PPA})}{\text{Full PPA}}$$

Where:

- Partial Credit = Percent credit for which a smaller PPA is eligible.
- Full PPA = 250 MW
- Full Credit = 25%
- Partial PPA = amount (less than 250 MW) of power under contract

*Maryland OREC Order* is an order issued by the Maryland PSC approving a qualifying offshore wind project and establishing an OREC pricing schedule, pursuant to Public Utilities Article § 7-704.1 of the Maryland Code Annotated. If the panel determines a bidder has been issued a Maryland OREC Order, it will be eligible for the entire 25% credit.

### **Additional Information Regarding the Auction**

#### *Non-Monetary Auction Procedures*

All bidders seeking a non-monetary auction credit are required to submit a non-monetary auction package. If a bidder seeks a non-monetary auction credit, this submission must contain information sufficient to establish the bidder's eligibility to receive a non-monetary credit in the monetary phase of the auction. Further information on this subject can be found in the section of this notice entitled, "Credit Factor Definitions." If a bidder does not submit a non-monetary package by August 8, 2014, to BOEM, then BOEM will assume that bidder is not seeking a non-monetary auction credit and the panel will not consider that bidder for a non-monetary auction credit.

#### *Bidder Authentication*

Prior to the auction, the Auction Manager will send several bidder authentication packages to the bidders shortly after BOEM has processed the BFFs. One package will contain tokens for each authorized individual. Tokens are digital authentication devices.

The tokens will be mailed to the Primary Point of Contact indicated on the BFF. This individual is responsible for distributing the tokens to the individuals authorized to bid for that company. Bidders are to ensure that each token is returned within three business days following the auction. An addressed, stamped envelope will be provided to facilitate this process. In the event that a bidder fails to submit a BFF, a bid deposit, or does not participate in the auction, BOEM will de-activate that bidder's token and login information, and the bidder will be asked to return its tokens.

The second package contains login credentials for authorized bidders. The login credentials will be mailed to the address provided in the BFF for each authorized individual. Bidders can confirm these addresses by calling 703-787-1320. This package will contain user login information and instructions for accessing the Auction System Technical Supplement and Alternative Bidding Form. The login information, along with the tokens, will be tested during the Mock Auction.

#### *Monetary Auction Times*

This section will describe, from a bidder's perspective, how the auction will take place. This information will be elaborated on and clarified in the Auction System Technical Supplement available on BOEM's website at: <http://www.boem.gov/State-Activities-Maryland/>. The Auction System Technical Supplement describes auction procedures that are incorporated by reference in this notice, except where the procedures described in the Auction System Technical Supplement directly contradict this notice.

The monetary auction will begin at 8:30 a.m. EDT on August 19, 2014. Bidders may log in as early as 6:30 a.m. on that day. We recommend that bidders log in no later than 7:30 a.m. on that day to ensure that any login issues are resolved prior to the start of

the auction. Once bidders have logged in, they should review the auction schedule, which lists the start times, end times, and recess times of each round in the auction. Each round is structured as follows:

- Round bidding begins;
- Bidders enter their bids;
- Round bidding ends and the Recess begins;
- Sometime during the Recess, previous Round results are posted;
- Bidders review the previous Round results and prepare their next Round bids;
- Next Round bidding begins.

The first round will last about 30 minutes, though subsequent rounds may be closer to 20 minutes in length. Recesses are anticipated to last approximately 10 minutes. The descriptions of the auction schedule and asking price increments included with this FSN are tentative. Bidders should consult the auction schedule on the bidding website during the auction for updated times. Bidding will continue until about 6:00 p.m. each day. BOEM anticipates the auction will last one or two business days, but bidders are advised to prepare to continue bidding for additional business days as necessary to resolve the auction.

BOEM and the auction contractors will use the auction platform messaging service to keep bidders informed on issues of interest during the auction. For example, BOEM may change the schedule at any time, including during the auction. If BOEM changes the schedule during the auction, it will use the messaging feature to notify bidders that a revision has been made, and direct bidders to the relevant page. BOEM

will also use the messaging system for other changes and items of particular note during the auction.

Bidders may place bids at any time during the round. At the top of the bidding page, a countdown clock will show how much time remains in the round. Bidders have until the scheduled time to place bids. Bidders should do so according to the procedures described in the Auction System Technical Supplement and practiced at the Mock Auction. No information about the round is available until the round has closed and results have been posted, so there should be no strategic advantage to placing bids early or late in the round.

#### *Alternate Bidding Procedures*

Any bidder who is unable to place a bid using the online auction and would be interested in placing a bid using the Alternate Bidding Procedures must:

- Call BOEM/the BOEM Auction Manager at the help desk number that is listed in the Auction Manual *before* the end of the round. BOEM will authenticate the caller to ensure he/she is authorized to bid on behalf of the company. The bidder must explain to the BOEM Auction Manager the reasons for which he/she is forced to place a bid using the Alternate Bidding Procedures. BOEM may, in its sole discretion, permit or refuse to accept a request for the placement of a bid using the Alternate Bidding Procedures.
- The Alternate Bidding Procedures enable a bidder who is having difficulties accessing the Internet to submit its bid via an Alternate Bidding Form that can be faxed to the auction manager. If the bidder has not placed a bid, but calls BOEM before the end of the round and notifies BOEM that it is preparing a bid using the

Alternate Bidding Procedures, and submits the Alternate Bidding Form by fax before the round ends, BOEM will likely accept the bid, though acceptance or rejection of the bid is within BOEM's sole discretion. When using the Alternate Bidding Procedures, if the bidder calls during the round, but does not submit the bid until after the round ends (but before the round is posted), BOEM may or may not accept the bid, in part based on how much time remains in the recess. Bidders are strongly encouraged to submit the Alternate Bidding Form before the round ends. If the bidder calls during the recess following the round, but before the previous round's results have been posted, BOEM will likely reject its bid, even if it has otherwise complied with all of BOEM's Alternate Bidding Procedures. If the bidder calls to enter a bid after results have been posted, BOEM will reject the bid.

Except for bidders who have uncontested bids in the current round, failure to place a bid during a round will be interpreted as dropping out of the auction. It is possible that bids entered in prior rounds, before the bidder stopped bidding, may be awarded one or both LAs pursuant to BOEM's stage 2 procedures. Bidders are held accountable for all bids placed during the auction. This is true if they continued bidding in the last round, if they placed an Exit Bid, or if they stopped bidding during the auction.

**ACCEPTANCE, REJECTION, OR RETURN OF BIDS:** BOEM reserves the right and authority to reject any and all bids. In any case, no lease will be awarded to any bidder, and no bid will be accepted, unless (1) the bidder has complied with all requirements of the FSN, applicable regulations and statutes, including, among others, those related to: bidder qualifications, bid deposits, and adherence to the integrity of the competitive bidding process, (2) the bid conforms with the requirements and rules of the

auction, and (3) the amount of the bid has been determined to be adequate by the authorized officer. Any bid submitted that does not satisfy any of these requirements may be returned to the bidder submitting that bid by the Program Manager of BOEM's Office of Renewable Energy Programs and, in that case, would not be considered for acceptance.

**PROCESS FOR ISSUING THE LEASES:** If BOEM proceeds with lease issuance, it will issue three unsigned copies of the lease to each winning bidder. Within 10 business days after receiving the lease copies, the winning bidder must:

1. Execute the lease on the bidder's behalf;
2. File financial assurance, as required under 30 CFR 585.515-537; and
3. Pay by electronic funds transfer (EFT) the balance of the bonus bid (bid amount less the bid deposit). BOEM requires bidders to use EFT procedures (not *pay.gov*, the website bidders used to submit bid deposits) for payment of the balance of the bonus bid, following the detailed instructions contained in the "Instructions for Making Electronic Payments" available on BOEM's website at:

<http://www.boem.gov/State-Activities-Maryland/>.

If the winning bidder does not meet these three requirements within 10 business days of receiving the lease copies as described above, or if the winning bidder otherwise fails to comply with applicable regulations or the terms of the FSN, the winning bidder will forfeit its bid deposit. BOEM may extend this 10 business-day time period if it determines the delay was caused by events beyond the winning bidder's control.

In the event that the provisional winner does not execute and return the leases according to the instructions in this notice, BOEM reserves the right to reconvene the

panel to determine whether it is possible to identify a bid that would have won in the absence of the bid previously determined to be the winning bid. In the event that a new winning bid is selected by the panel, BOEM will follow the procedures in this section for the new winner(s).

BOEM will not execute a lease until (1) the three requirements above have been satisfied, (2) BOEM has accepted the winning bidder's financial assurance, and (3) BOEM has processed the winning bidder's payment. The winning bidder may meet financial assurance requirements by posting a surety bond or by setting up an escrow account with a trust agreement giving BOEM the right to withdraw the money held in the account on demand by BOEM. BOEM may accept other forms of financial assurance on a case-by-case basis in accordance with its regulations. BOEM encourages provisionally winning bidders to discuss the financial assurance requirement with BOEM as soon as possible after the auction has concluded.

Within 45 days of the date that the winning bidder receives the lease copies, the winning bidder must pay the first year's rent using the *pay.gov* Renewable Energy Initial Rental Payment form available at:

<https://pay.gov/paygov/forms/formInstance.html?agencyFormId=27797604>.

Subsequent annual rent payments must be made following the detailed instructions contained in the "Instructions for Making Electronic Payments" available on BOEM's website at: <http://www.boem.gov/State-Activities-Maryland/>.

**ANTI-COMPETITIVE BEHAVIOR:** In addition to the auction rules described in this notice, bidding behavior is governed by Federal antitrust laws designed to prevent



anticompetitive behavior in the marketplace. Compliance with the BOEM's auction procedures will not insulate a party from enforcement of the antitrust laws.

In accordance with the Act at 43 U.S.C. 1337(c), following the auction, and before the acceptance of bids and the issuance of leases, BOEM will "allow the Attorney General, in consultation with the Federal Trade Commission, 30 days to review the results of the lease sale."

If a bidder is found to have engaged in anti-competitive behavior or otherwise violated BOEM's rules in connection with its participation in the competitive bidding process, BOEM may reject the high bid.

Anti-competitive behavior determinations are fact specific. However, such behavior may manifest itself in several different ways, including, but not limited to:

- An agreement, either express or tacit, among bidders to not bid in an auction, or to bid a particular price;
- An agreement among bidders not to bid for the LA;
- An agreement among bidders not to bid against each other; and
- Other agreements among bidders that have the effect of limiting the final auction price.

BOEM may decline to award a lease pursuant to the Act at 43 U.S.C. 1337(c) if it is determined by the Attorney General in consultation with the Federal Trade Commission that doing so would be inconsistent with the antitrust laws (e.g., heavily concentrated market, etc.).

For more information on whether specific communications or agreements could constitute a violation of Federal antitrust law, please see:

<http://www.justice.gov/atr/public/business-resources.html>, or consult counsel.

**BIDDER’S FINANCIAL FORM SELF-CERTIFICATION:** Each bidder is required to sign the self-certification, in accordance with 18 U.S.C. 1001 (Fraud and False Statements) in the BFF, which can be found on BOEM’s website:

<http://www.boem.gov/State-Activities-Maryland/>. The form must be filled out and returned to BOEM in accordance with the “Deadlines and Milestones for Bidders” section of this notice.

**NON-PROCUREMENT DEBARMENT AND SUSPENSION REGULATIONS:**

Pursuant to regulations at 43 CFR Part 42, Subpart C, an OCS renewable energy lessee must comply with the Department of the Interior’s non-procurement debarment and suspension regulations at 2 CFR parts 180 and 1400 and agree to communicate the requirement to comply with these regulations to persons with whom the lessee does business as it relates to this lease, by including this term as a condition in their contracts and other transactions.

**FORCE MAJEURE:** The Program Manager of BOEM’s Office of Renewable Energy Programs has the discretion to change any date, time, and/or location specified in the FSN in case of a *force majeure* event that the Program Manager deems may interfere with a fair and proper lease sale process. Such events may include, but are not limited to: natural disasters (e.g., earthquakes, hurricanes, floods), wars, riots, acts of terrorism, fire, strikes, civil disorder or other events of a similar nature. In case of such events, bidders

should call 703-787-1320 or access the BOEM website at:

<http://www.boem.gov/Renewable-Energy-Program/index.aspx>.

**APPEALS:** The appeals procedures are provided in BOEM's regulations at 30 CFR 585.225 and 585.118(c). Pursuant to 30 CFR 585.225:

- (a) If BOEM rejects your bid, BOEM will provide a written statement of the reasons, and refund any money deposited with your bid, without interest.
- (b) You will then be able to ask the BOEM Director for reconsideration, in writing, within 15 business days of bid rejection, under 30 CFR 585.118(c)(1). We will send you a written response either affirming or reversing the rejection.

The procedures for appealing final decisions with respect to lease sales are described in 30 CFR 585.118(c).

**PROTECTION OF PRIVILEGED OR CONFIDENTIAL INFORMATION:**

BOEM will protect privileged or confidential information that you submit as required by the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial or financial information that you submit that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly mark it and request that BOEM treat it as confidential. BOEM will not disclose such information, subject to the requirements of FOIA. Please label privileged or confidential information "Contains Confidential Information" and consider submitting such information as a separate attachment.

However, BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such information. Additionally, BOEM may not treat as confidential the legal title of the commenting entity (e.g., the name of your company). Information that is not labeled as privileged or confidential will be regarded by BOEM as suitable for public release.

Dated: June 23, 2014.

Walter D. Cruickshank  
Acting Director, Bureau of Ocean Energy Management

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